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IN THE

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APR 9 1946

CHARLES ELMORE DROPLEY
CLERK

Supreme Court of the United States

October Term, 1945

No. 1091

LOS ANGELES SOAP COMPANY, a Corporation,

Petitioner,

vs.

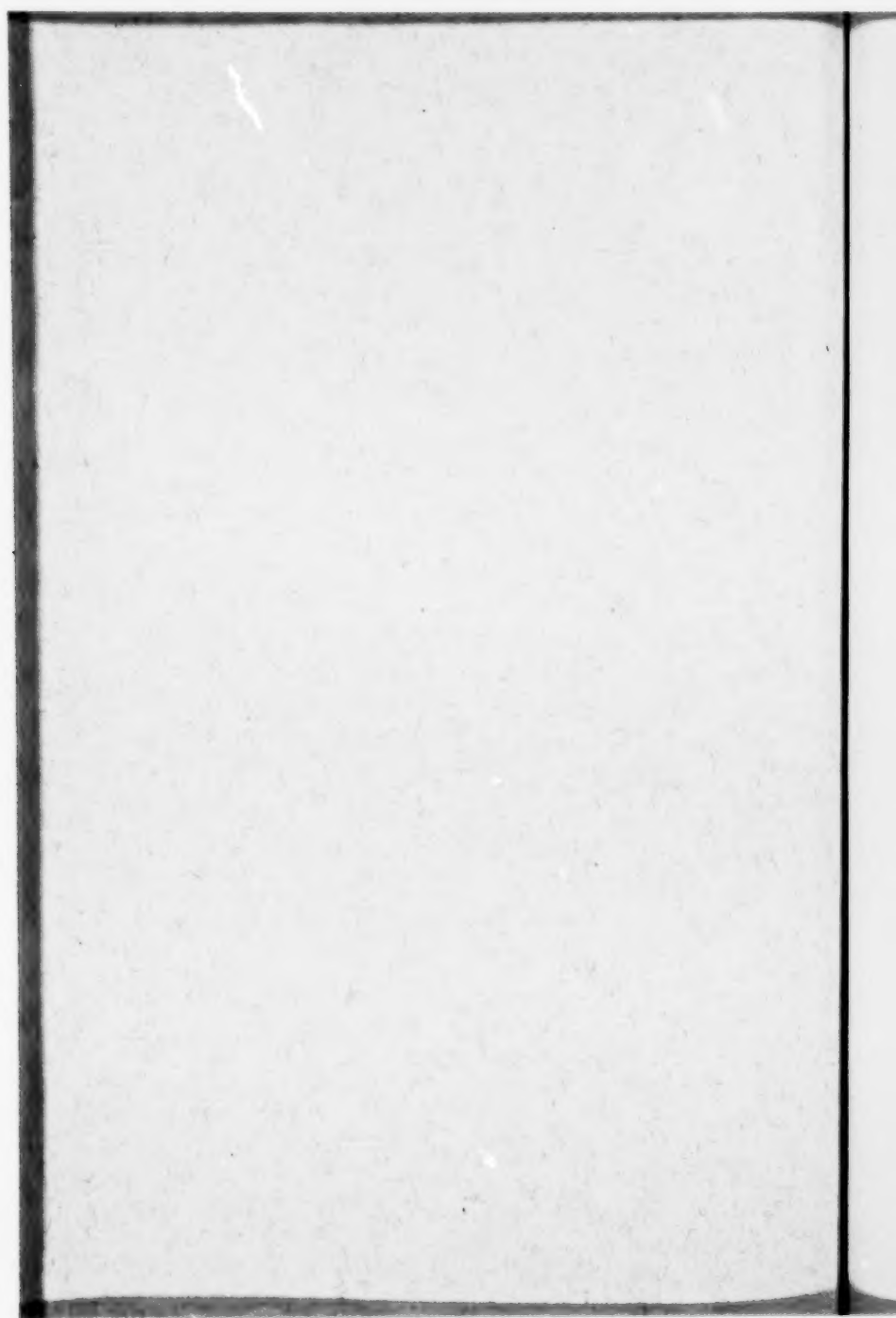
UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Ninth Circuit,
and Brief in Support Thereof.

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IN THE
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No.

LOS ANGELES SOAP COMPANY, a Corporation,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

The petition of Los Angeles Soap Company, a corporation,
respectfully represents:

Summary Statement of Matter Involved.

The controversy here involved concerns the right of the Petitioner to recover interest collected by a collector of internal revenue on a tax on the first domestic processing of cocoanut oil of Philippine origin. [R. 7, 9.]

The Los Angeles Soap Company, the Petitioner, is the manufacturer of soap, and in the manufacture of its product it used a large quantity of cocoanut oil of Philippine origin.

In 1934, the Congress of the United States passed the Revenue Act of 1934. This provided, among other things, for a tax of 3¢ per pound upon the first domestic processing of cocoanut oil derived from the Philippine Islands. The Act provided that all taxes collected under Section 602½ of the Act with respect to cocoanut oil derived from the Philippine Islands should be held as a separate fund and paid to the Treasury of the Philippine Islands. (See appendix hereto.)

A number of soap companies in the United States who processed cocoanut oil of this origin were of the belief that the provisions of Section 602½ of the Revenue Act of 1934 were unconstitutional. Among these was the Petitioner herein. It instituted an action in the District Court of the United States in and for the Southern District of California, Central Division, against Nat Rogan, as Collector of Internal Revenue, to enjoin the collection of the said processing tax and for declaratory relief upon the ground that the tax so levied was unconstitutional in that it was not to pay the debts of the United States nor for the general welfare of the United States. This action was No. 835-Y in Equity and was entitled "Los Angeles Soap Company, a corporation, Plaintiff, vs. Nat Rogan, individually and as Collector of Internal Revenue for the Sixth Collection District of California." [R. 29.]

Under date of February 11, 1936, the District Court of the United States, in the said proceeding in Equity No. 835-Y, issued a temporary restraining order restraining the said Nat Rogan and others acting under him from collecting or attempting to collect the tax imposed by said Section 602½ of the Revenue Act of 1934. Said tem-

porary restraining order provided among other things as follows:

"Plaintiff, however, to continue to file monthly returns with the defendant.

Provided, however, that the plaintiff, Los Angeles Soap Company, give security in the amount of the said exactions claimed to have become due on the 31st day of January, 1936, in the sum of \$28,618.48, said security to be in the form of a Cashier's Check of the Farmers and Merchants National Bank of Los Angeles, in said amount, said check to be made payable to the order of R. S. Zimmerman, Clerk of the United States District Court, Southern District of California, said check to be deposited in the Registry of the Court by the said Clerk pending the further order of this Court, and *to deposit monthly amounts, hereafter, as may be disclosed by the said monthly returns.*" (Italics supplied.)

Under this order, the Petitioner herein deposited in the registry of the U. S. District Court, in accordance with said order, three payments aggregating \$107,221.49. After hearing the matter, the District Court entered a decree denying the injunction and dismissing the cause. [R. 31.]

The Petitioner then presented its petition for an appeal from the decree to the United States Circuit Court of Appeals for the Ninth Circuit, praying that all proceedings be stayed by supersedeas. On April 14, 1936, the said District Court made an order granting the prayer of the Petitioner herein and allowing the appeal and restraining the Collector from proceeding against the

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Petitioner. The said order provided among other things as follows:

“Provided, However, that the plaintiff, pending the said appeal, shall in accordance with the Revenue Laws of the United States, continue to file with the defendant as Collector of Internal Revenue monthly returns of the tax imposed by Section 602½ of the Revenue Act of 1934, and Provided Further, However, that *the plaintiff will deposit in the registry of this Court on or before the last day of each month the amount of tax disclosed by such monthly returns*, and in the event of the failure of the plaintiff to file said returns or deposit said moneys within ten (10) days after said time this order shall thereupon terminate insofar as it supersedes and suspends the order and decree of April 1st, 1936, and insofar as it enjoins and restrains the defendant as hereinbefore provided.” (Italics supplied.)

Pursuant to this last-mentioned order, the Petitioner made thirteen payments into the registry of the District Court, the said thirteen payments aggregating the amount of \$541,653.05. The total amount of all payments made into the registry of the Court under the two said orders was \$648,874.54. [R. 32.]

While the Petitioner's appeal was pending in Case No. 835-Y, the identical question was determined by the Supreme Court of the United States in the case of the *Cincinnati Soap Company v. United States*, 301 U. S. 308, which held that Section 602½ of the Revenue Act of 1934 was constitutional.

Shortly after the *Cincinnati Soap Company* case was decided, the Circuit Court of Appeals, on motion of the Petitioner herein, dismissed the Petitioner's appeal in Case No. 835-Y.

Under date of June 8, 1937, the District Court made and entered a decree spreading the mandate and dissolving the injunction and ordering the disposition of funds deposited in the registry of the Court. This decree provided, among other things, that the sum of \$648,874.54 deposited in the registry of the Court should be delivered to Nat Rogan as Collector of Internal Revenue, "to be applied against any tax now due from plaintiff under Section 602½ of the Revenue Act of 1934 without prejudice to the assertion against any deficiency in tax or interest upon such tax * * * and without prejudice to the assertion by plaintiff of no deficiency in tax or interest upon such tax." [R. 36.]

Thereafter the said Nat Rogan, as Collector, insisted that the Petitioner herein owed interest upon the various amounts which it had paid into the registry of the Court as hereinbefore set forth, and demanded of the Petitioner that it pay to him, as such Collector of Internal Revenue, interest upon the various items making up the said sum of \$648,874.54. [R. 37.] The Petitioner herein denied that it owed any interest because the said excise taxes were paid into the registry of the Court pursuant to the tenor of the orders of the District Court and its returns were filed in due time and were not delinquent and the amounts shown by the said returns were paid before the same became delinquent. [R. 37.]

Notwithstanding these facts, the said Collector of Internal Revenue demanded and received from the Petitioner the sum of \$28,443.31 as interest upon the said amounts, and the Petitioner herein, under compulsion, paid the said sum of \$28,443.31 as interest as aforesaid on July 7, 1937. [R. 37.]

In due time, Petitioner filed its claim for a refund of the interest so collected, which claim was rejected, and the present litigation was instituted in the United States District Court for the Southern District of California, Central Division, for the purpose of recovering the amount so paid as interest. [R. 37, 38.]

After trial in the District Court, judgment was rendered in favor of the Petitioner in the sum of \$28,372.06, with interest thereon at the rate of 6% per annum from July 7, 1937. [R. 61, 62.] From this judgment, the Respondent herein perfected an appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit.

The United States Circuit Court of Appeals for the Ninth Circuit reversed the judgment of the United States District Court upon the ground that the deposit in court of the amount of the tax did not constitute payment, leaving other questions raised by the Petitioner undetermined.

The Petitioner presented a petition for a rehearing by the United States Circuit Court of Appeals for the Ninth Circuit, which was denied on March 1, 1946. Upon petition, the United States Circuit Court of Appeals granted an order staying the issuance of its writ of mandate to and including April 8, 1946, and until after the Supreme Court of the United States should pass upon a petition for writ of certiorari.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as Amended by the Act of February 13, 1925, chap. 229, 43 Stat. 938, 28 U. S. C. A. Sec. 347; Rev. Stat. Sec. 1008 as amended, 28 U. S. C. A. Sec. 350.

2. The date of the entry of the judgment of the Circuit Court of Appeals of the Ninth Circuit herein sought to be reviewed is January 29, 1946. The date of the denial of the Petitioner's petition for rehearing is March 1, 1946.

Questions Presented.

1. Did the Circuit Court of Appeals for the Ninth Circuit err in holding that the District Court erred in holding that the deposits made by the taxpayer constituted payments of its taxes?

2. Did the Circuit Court of Appeals err in holding that the deposits made in action No. 835-Y were in the nature of a cash bond and carried no more significance than the giving of a surety bond, and that such deposits were not payment?

3. Did the Circuit Court of Appeals err in holding that no payment of the taxes in question was made until June 8, 1937?

4. Did the Circuit Court of Appeals err in holding that the Petitioner was liable for interest on the amounts of the taxes deposited in the registry of the District Court in action 835-Y pursuant to valid orders of that Court?

5. Did the Circuit Court of Appeals err in holding that the United States of America was entitled to interest on monies that did not belong to it?

6. Did the Circuit Court of Appeals err in failing to pass upon all questions raised by the Petitioner?

7. Did the Circuit Court of Appeals err in failing to hold that the monies deposited in the registry of the Court in action 835-Y were in *custodia legis* and therefore were not subject to interest?

8. Did not the Circuit Court of Appeals err in holding that the Petitioner was liable for interest upon the excise tax upon the first domestic processing of cocoanut oil?

Reasons Relied on for the Allowance of the Writ.

The decision of the Circuit Court of Appeals in holding that the Petitioner was liable for interest on the first domestic processing of cocoanut oil of Philippine origin is contrary to a long-established rule of law that where one owing a monetary obligation pays the same into court, interest stops. In this particular case, the Petitioner was exercising its constitutional right to question the validity of Section 602½ of the Revenue Act of 1934. Owing to the peculiar provision that the impost levied under this section should be held separate and apart in a fund and paid over to the Government of the Philippine Islands, there was imminent danger that the amounts collected under the provisions of the section would be paid over to the Government of the Philippine Islands and would be lost forever to the Petitioner. The United States District Court, in the previous case, apparently recognized this danger and enjoined the collection of the

tax. Under valid orders of the Court, the exact amount of the tax shown by the returns was paid into the registry of the Court, and when the question was ultimately determined the funds so deposited were delivered to the collector of internal revenue to the exact penny.

The decision of the Circuit Court of Appeals is contrary to the long-established rule that such payments into the registry of the Court will stop the running of interest, as, for example, in the case of amounts deposited in court in condemnation proceedings and in interpleader proceedings.

The Petitioner feels that the action of the Collector in exacting interest in a case where it had lost the use of the money and the United States Government was not entitled to the use of the money was harsh and oppressive, and, as Judge Fee, in his opinion in the District Court in the instant case, said, "Here the attitude of the Collector seems to border on the vindictive." [R. 45.]

The Petitioner feels that the Circuit Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled by your honorable Court, and that the Circuit Court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of your honorable Court's power of supervision.

Wherefore, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of your honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and send to your honorable Court, on a day certain to be therein named, a full and complete transcript of the record of all proceedings

in the case of United States of America, Appellant, vs. Los Angeles Soap Company, a Corporation, Appellee, bearing docket number 11,032, to the end that the judgment of the United States Circuit Court of Appeals for the Ninth Circuit may be reviewed and reversed by your honorable Court; and for such other and further relief as may seem meet and proper in the premises.

And your Petitioner will ever pray, etc.

Dated Los Angeles, California, March 27, 1946.

LOS ANGELES SOAP COMPANY,
By ISIDORE B. DOCKWEILER,
THOMAS A. J. DOCKWEILER,
Attorneys for Petitioner.

The undersigned counsel of record hereby certify that the foregoing petition is well founded and is not interposed for the purpose of delay.

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Attorneys for Petitioner.

FRANK MERGENTHALER,
Of Counsel.

